

MONTANA LEGISLATIVE HISTORY

Chapter 505 19 79

Bill H 749 S _____ Original bill & history / c

H. Committee on Judiciary

Hearing Date(s) Feb 19 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 19 ☒ C

S. Committee on Judiciary

Hearing Date(s) Mar 12 ☒ C

Mar 13 ☒ C

Mar 14 ☒ C

_____ ☐ C

Mar 14 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

CHAPTER NO. 505.

HOUSE BILL NO. 749

INTRODUCED BY FRATES, COONEY, McBRIDE, UHDE, GOULD,
TROPILA, RAMIREZ, DUSSAULT, ROTH, SPILKER,
IVERSON, HARPER, METCALF, REICHERT

IN THE HOUSE

February 12, 1979	Introduced and referred to Committee on Judiciary.
February 19, 1979	Committee recommend bill do pass. Report adopted.
February 21, 1979	Second reading, do pass as amended.
February 22, 1979	Correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Judiciary.
March 16, 1979	Committee recommend bill be concurrent in as amended. Report adopted.
March 19, 1979	Motion pass consideration.
March 20, 1979	Second reading, concurred in.
March 23, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 24, 1979	Returned from second house. Concurred in as amended.
March 26, 1979	On motion consideration passed until the 71st Legislative Day.

March 30, 1979

Second reading, amendments
adopted.

March 31, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 749
 2 INTRODUCED BY: Fraser Cooney McBride White
 3 Angel Ramirez Donna Wilson Spencer Juarez Hayden
Nutcrack Reichert

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE SEXUAL ABUSE OF
 5 CHILDREN A CRIMINAL OFFENSE; DEFINING THE OFFENSE TO INCLUDE
 6 THE ACTUAL SEXUAL ABUSE OF CHILDREN AND THE PREPARATION,
 7 DISTRIBUTION, AND SALE OF CHILD PORNOGRAPHY."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Sexual abuse of children. (1) A person
 11 commits the offense of sexual abuse of children if he
 12 knowingly:

13 (a) employs, uses, or permits the employment or use of
 14 a child in an exhibition of sexual contact, actual or
 15 simulated;

16 (b) photographs, films, videotapes, or records a child
 17 engaging in sexual contact, actual or simulated;

18 (c) persuades, entices, counsels, or procures a child
 19 to engage in sexual contact, actual or simulated;

20 (d) processes, develops, prints, publishes,
 21 transports, distributes, sells, possesses with intent to
 22 sell, exhibits, or advertises material consisting of or
 23 including a photograph, photographic negative, undeveloped
 24 film, videotape, or recording representing a child engaging
 25 in sexual contact, actual or simulated; or

1 (e) finances any of the activities described in
 2 subsections (1)(a) through (1)(d) knowing that the activity
 3 is of the nature described in those subsections.

4 (2) A person convicted of the offense of sexual abuse
 5 of children shall be fined not to exceed \$10,000 or be
 6 imprisoned in the state prison for any term not to exceed 20
 7 years, or both.

8 (3) For the purposes of this section, "child" means
 9 any person less than 13 years old.

10 (4) Possession of three items described in subsection
 11 (1)(d) is prima facie evidence of intent to sell.

12 Section 2. Codification. Section 1 is intended to be
 13 codified as an integral part of Title 45, chapter 5, part 6,
 14 and the provisions contained in Title 45 apply to section 1.

-End-

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 19, 1979

The regular meeting of the Judiciary Committee was called to order on Monday, February 19, at 8:00 a.m. in room 436 of the Capitol Building. All members were present with the exception of Representatives Holmes, Eudaily and Seifert. Scheduled for hearing were bills 401, 747, 748, 749, 751, 760, 774, 775, 777, 782, and 783.

HOUSE BILL NO. 749: Representative Frates. This bill would make the sexual abuse of children a criminal offense. The second section is the offense, prima facie evidence, a prima facie case is a case that will win unless the other side comes forward with evidence to dispute it. This bill deals with a child under 13 years of age. He listed some of the porno magazines that use children and gave examples of other types of child abuse.

REPRESENTATIVE KEEDY: Why does your bill stop with children 13 years old, and Representative Frates said that was an arbitrary figure and the committee could amend it and he would have no objection.

REPRESENTATIVE KEYSER: Asked how many other states have this type of legislation and Mr. Frates said he did not know.

There was some discussion about the age limit and the general feeling was that it should be higher than 13. With no other discussion and no question the hearing closed on House Bill No. 749.

HOUSE BILL NO. 747: Representative Hand. This bill has directed the Attorney General with another measure of assurance that the intent is clear. If there are no statements of intent on ballot issues he is to write one. I have a very short statement here from John Hellio that I would like to read. "I feel a growing concern because I have not understood. I have trouble in comprehension and I believe that others will make errors in voting. Even with the best educational background people could not understand these issues. It just will be helpful if the Attorney General will not let personal preference show."

MIKE McGRATH: We wanted to draft a bill to deal with the entire problem and under SB 256 we thought we had it. That is on second reading in the Senate today. That will explain the explanatory statement. Of the initiatives on the ballot last election most were self-serving.

Discussion about Senate Bill 256.

EXECUTIVE SESSION
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 19, 1979

Following the regular meeting the Judiciary Committee went into executive session to take action on bills pending. The meeting was called to order by Chairman Scully at 10:05 a.m. in room 436 of the Capitol Building. All members were present except Representative Curtiss, who was excused by left her vote on several bills.

HOUSE BILL NO. 691: Representative Seifert moved "do not pass". Representative Daily moved a substitute motion "do pass". The motion carried on a roll call vote of 12 yes, 6 no and Representative Curtiss not voting.

A statement of intent will be attached. Representative Seifert will offer an amendment from the floor, because of the lack of time.

HOUSE BILL NO. 747: Representative Keedy moved "do pass". The motion carried with the vote unanimous. It was discovered there is an almost identical bill, sponsored by Representative Ramirez that will be heard on Tuesday. The committee agreed to hold this bill until Tuesday when they could look at both bills and act on them at that time.

HOUSE BILL NO. 748: Representative Keyser moved "do pass". The motion carried with the vote unanimous. Representative Lory was appointed to remind Representative Marks, the sponsor of the bill, to offer his amendment from the floor because of the lack of time.

HOUSE BILL NO. 749: Representative Keedy moved to amend the age from 13 to 16. The motion carried with the vote unanimous. He will do so from the floor because of the lack of time. Representative Holmes moved to amend on line 19 to insert "as applied to section (a) (b) (c) and (d)". The motion carried and she will amend from the floor.

Representative Conroy moved "do pass" and the motion carried with the vote unanimous.

HOUSE BILL NO. 751: Representative Lory moved "do pass". Representative Keyser moved to amend on page 3, line 8. The motion carried with 4 representatives voting "no". He will offer the amendment from the floor.

The motion "do pass" carried with Representatives Day and Daily voting "no".

There were no further proponents and no opponents.

Representative Hand suggested that both bills can't be enacted together and maybe they should be compared.

Senator Lensink stated that SB 256 was submitted by the attorney general's office and he summarized the differences in the bills.

There were no further questions or comments and the hearing on the bill was closed.

CONSIDERATION OF HOUSE BILL 749:

This is an act to make sexual abuse of children a criminal offense; defining the offense to include the actual sexual abuse of children and the preparation, distribution, and sale of child pornography. Representative Frates stated that they are trying to control child pornography. He stated that this was a \$2 billion industry and growing. He said that in California, this is a felony with a prison sentence - 7 or younger, they get 50 years; 7 to 13, 10 years and fines of \$25 to \$50,000.00.

There were no further proponents and no opponents.

Senator Anderson questioned if they had any opponents in the house and Representative Frates stated none, whatever.

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 719:

This is an act to amend section 61-6-111, MCA, to prohibit an owner of a motor vehicle whose registration has been suspended from transferring such registration or motor vehicle until the judgment against him has been stayed or satisfied in full, subject to certain exceptions.

Larry Majerus, Administrator for the Motor Vehicle Division, stated that he was not here opposing the bill and his remarks may be a little premature. He stated that he could not argue with the intent of the bill but that it

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Senate Judiciary Committee
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Senator Lensink said that before acting on this, he would try and round up Representative Burnett and see what he has to say.

Senator Towe said that in the exceptions 122 and 125, these would be brought in as exceptions and wondered why the bill would be unworkable. Mr. Majerus said that our main objection is that the judgment does not show on the face of the title. He stated that he could sell his car and when you go to get your title you are not going to be able to get it until you pay the judgment.

There were no questions and no further comments and the hearing on the bill was closed.

DISPOSITION OF HOUSE BILL 749:

Senator Lensink stated that Joan Mayer from the Legislative Council, pointed out that this does not include the procurement of prostitutes. Joan Mayer testified that there are probably some legitimate films that are made.

Senator Towe questioned what is the age of consent and Joan Mayer stated 16 if there are three or more years difference, then a harder penalty.

Senator Turnage said on page 2, lines 13 and 14, that you better not have more than three copies of Playboy and felt that subsection (4) should be taken out.

Senator Lensink requested Ms. Mayer to draw up some amendments.

DISPOSITION OF HOUSE BILL 621:

Senator Turnage stated that his problem is with a single check-off and wondered what is he going to check-off. He also said that he does think it has fiscal impact, it definitely contemplates a new program and the idea that there won't be any money involved just isn't realistic.

Senator Lensink stated that he felt that the testimony did not really get to the bill.

DISPOSITION OF HOUSE BILL 797:

Senator Van Valkenburg moved that the bill be amended on page 2, line 24, following "court" by inserting "for good cause". The motion carried unanimously.

Senator Turnage moved that the bill be concurred in, as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 156:

Senator Turnage moved that the bill be tabled. He stated this could be taken care of in SB65. The motion carried.

DISPOSITION OF HOUSE BILL 747:

It was noted that SB 256 repeals the section that this bill deals with. Senator Turnage moved that this bill be tabled. The motion carried unanimously.

RECONSIDERATION OF HOUSE BILL 338:

Joan Mayer from the Legislative Council passed out some amendments and it was suggested that people take a look at this and action be taken later.

DISPOSITION OF HOUSE BILL 719:

Senator Brown moved that this bill be not concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 749:

Joan Mayer worked up some amendments and it was suggested that they be considered later.

DISPOSITION OF HOUSE BILL 559:

Senator Turnage wondered if they should fund an association in that manner and if so, why raise the fee to \$4.00. He said the clerks and recorders raise is \$1.00 so they can have \$1.00 for their association and he said that he was skeptical about raising funds for an association.

Senator Brown moved that the bill be not concurred in.

charges brought against a policeman continue to sit on the commission for that business until a decision has been made. Representative Pistoria stated that this bill is to correct a situation that has happened and he gave out handouts to the committee. (See Exhibit A.) He further explained the circumstances involved.

There were no further proponents and no opponents.

Senator Olson questioned why did this drag on for two years. Representative Pistoria said it was 3 years, 7 months and 7 days over a bicycle.

Senator Van Valkenburg moved that the bill be concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 805:

Senator O'Hara moved that the bill be concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 813:

It was recommended that Joan Mayer, legal counsel for the committee, work on some amendments on the question of guardian and look at SB 301.

DISPOSITION OF HOUSE BILL 259:

Joan Mayer, legal counsel for the committee, went through proposed amendments. Senator Turnage moved that the amendments be adopted. The motion carried unanimously. Senator Turnage moved that the bill, as amended, be concurred in. The motion carried.

DISPOSITION OF HOUSE BILL 749:

Senator Towe moved that the bill be amended on page 2, lines 13 and 14 by striking this in its entirety. The motion carried unanimously.

Senator Turnage moved that the bill be concurred in, as amended. The motion carried.